



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

May 20, 2020

BY ECF

The Honorable Jesse M. Furman
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Michael Avenatti*, 19 Cr. 374 (JMF)

Dear Judge Furman:

The Government respectfully submits the attached proposed scheduling order on behalf of the parties, pursuant to the Court's May 15, 2020 Order. The parties have adjusted the pretrial deadlines previously set by the Court, as well as their jointly agreed upon schedule for mutual pretrial disclosures, to correspond to the new trial date. With respect to the briefing schedule for any potential renewed motion by the defendant for transfer of venue, the defendant proposes that his brief be filed on or before July 6, 2020; the Government's response be filed on or before July 20, 2020; and the defendant's reply, if any, be filed on or before July 27, 2020. The Government proposes that the defendant's brief be filed on or before June 5, 2020; the Government's response be filed on or before June 19, 2020; and the defendant's reply, if any, be filed on or before June 26, 2020.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
UNITED STATES OF AMERICA	:	19 Cr. 374 (JMF)
	:	
- v -	:	<u>SCHEDULING ORDER</u>
	:	
MICHAEL AVENATTI,	:	
	:	
Defendant.	:	
	:	
-----X		

JESSE M. FURMAN, United States District Judge:

1. Trial Date

Trial in this case is scheduled to begin on **Tuesday, October 13, 2020**, at **9:30 a.m.** The trial, including jury selection (except as noted below), will be held in **Courtroom 110** of the Thurgood Marshall Courthouse, 40 Centre Street, New York, New York 10007.

2. Final Pretrial Conference

Unless and until the Court orders otherwise, the parties shall appear for a final pretrial conference on **Tuesday, October 6, 2020**, at 10:00 a.m. in **Courtroom 110** of the Thurgood Marshall Courthouse, 40 Centre Street, New York, New York 10007. **The final pretrial conference must be attended by the attorney who will serve as principal trial counsel.**

3. Jury Selection

Unless and until the Court orders otherwise, the Court will follow these procedures in connection with selecting a jury:

- A pool of approximately 150 prospective jurors will complete the questionnaire on the morning of **Wednesday, October 7, 2020**, under the supervision of the Jury Department.
- The Government will be responsible for (a) making copies of the final version of the questionnaire adopted by the Court for the Jury Department and (b) making copies of the completed questionnaires immediately available in electronic format to the defense and the Court. The Government shall make arrangements directly with the Jury Department to obtain the completed questionnaires.
- No later than **Friday, October 9, 2020**, at **10:00 a.m.**, the Government shall file a letter with a list of jurors (identified by juror number, not name) that both sides agree

should be excused for cause. Prospective jurors on the parties' joint list will be excused without any review or inquiry by the Court.

- No later than the same date and time (**Friday, October 9, 2020, at 10:00 a.m.**), the parties shall also file lists of jurors (identified by juror number, not name) that only one side believes should be excused for cause, along with a short explanation of why the party believes each juror should be excused. The Court will review the parties' lists and decide whether to exclude any jurors on that basis.
- The Court will then conduct oral *voir dire* of the remaining prospective jurors — in a randomized order (i.e., not according to juror numbers) — beginning at **9:30 a.m. on Tuesday, October 13, 2020.**

4. Pretrial Submissions

Any proposed *voir dire*, proposed jury instructions, and proposed verdict forms, as well as any motions *in limine* or trial memoranda, shall be filed by **noon on September 15, 2020.** Any opposition to a motion *in limine* or trial memorandum shall be filed by **noon on September 22, 2020.**

In accordance with the Court's Individual Rules and Practices for Criminal Cases, available at <https://nysd.uscourts.gov/hon-jesse-m-furman>, a filing party must submit one courtesy hard copy of each these documents to the Court at the time of filing. In addition, the proposed *voir dire*, proposed jury instructions, and proposed verdict forms must be e-mailed, in Microsoft Word format, to Furman_NYSDChambers@nysd.uscourts.gov.

5. Pretrial Disclosures

The parties have agreed to the following schedule with respect to the exchange of certain material and information prior to and during trial, which the Court adopts at the request of the parties:

Friday, October 2, 2020:

The Government provides to the defendant a list of exhibits that the Government reasonably expects to seek to introduce during its case-in-chief. This exhibit list will be subject to good-faith revision as the Government continues to prepare its case for trial, including in response to the defense's list of proposed exhibits that it anticipates seeking to introduce into evidence during the Government's case-in-chief. The Government also provides to the defendant a list of witnesses whom the Government reasonably expects to call in its case-in-chief.

Tuesday, October 6, 2020: The Government provides to the defendant material covered by 18 U.S.C. § 3500.

Wednesday, October 7, 2020: The defendant provides to the Government a list of exhibits that the defendant reasonably expects to introduce during the Government's case-in-chief. This exhibit list will be subject to good-faith revision as the defense continues to prepare for its case.

At least five business days prior to the anticipated start of a defense case: The defendant provides to the Government material covered by Rule 26.2 of the Federal Rules of Criminal Procedure.

At least three business days prior to the anticipated start of a defense case: The defendant provides the Government with a list of exhibits that he reasonably expects to seek to introduce during his case. This exhibit list will be subject to good-faith revision as the defense continues to prepare for its case.

Recognizing that 3500 and Rule 26.2 obligations are continuing, the parties have agreed that when new material is generated after the pertinent deadline described above, such material will be timely provided, *i.e.*, generally the same day it is generated, and prior to the witness to whom it applies next taking the stand. The defense has also agreed that, consistent with Rule 26.2(c), if the defense intends to withhold any such material on the ground of privilege or work-product, it will provide that material to the Court for timely review.

In addition to the schedule above, the parties have also conferred and reached agreement regarding the following procedures in order to narrow or moot disputes, which the Court adopts at the request of the parties: (1) attempting in good faith to share any proposed summary chart at least one week before it will be sought to be introduced, notwithstanding the foregoing, to permit the opposing party to review the accuracy of the chart; (2) sharing any visuals or slides to be used in opening statements, at least one business day before such statements; and (3) alerting the opposing party to (a) the next day's witnesses, in anticipated order, and (b) the exhibits expected to be sought to be introduced through those witnesses, by at least 5:00 p.m. on the day before calling such witnesses, and the party to whom such disclosure is made will provide any objections to such exhibits as quickly as possible that evening, so that the parties may confer and then be prepared, if necessary, to raise any objections with the Court in the morning, prior to the beginning of the trial day during which the exhibits are expected to be sought to be introduced.

The parties have also agreed that they anticipate timely agreeing to stipulations to avoid the need to call custodians of records or otherwise to authenticate evidence or the accuracy of

transcripts, and the parties agree that the dates set forth herein do not alter the parties' reciprocal discovery obligations or the obligation to produce materials obtained pursuant to Federal Rule of Criminal Procedure 17(c), absent an order to the contrary.

6. Familiarity with the Court's Individual Rules and Practices

The parties must familiarize themselves with the Court's Individual Rules and Practices for Criminal Cases and Individual Rules and Practices for Trials, both of which are available at <https://nysd.uscourts.gov/hon-jesse-m-furman>. Among other things, it is the parties' obligation to ensure that whatever technological needs they have — for the use of computers or other devices, presentation of evidence, or otherwise — are addressed in advance of trial. The parties shall contact Chambers and/or the District Executive's Office sufficiently in advance of the trial date to raise any questions, address any technological needs, and arrange for testing of any technology.

7. Briefing Schedule for Renewed Motion to Transfer

To the extent the defendant wishes to file a new motion to transfer this case to the Central District of California based on alleged changed circumstances, the defendant shall file any such motion on or before **[Defendant proposes Monday, July 6, 2020; Government proposes Friday, June 5, 2020]**. The Government shall file any response to the defendant's motion on or before **[Defendant proposes Monday, July 20, 2020; Government proposes Friday, June 19, 2020]**. The defendant shall file any reply to the Government's response on or before **[Defendant proposes Monday, July 27, 2020; Government proposes Friday, June 26, 2020]**.

SO ORDERED.

Dated: May ____, 2020
New York, New York

JESSE M. FURMAN
United States District Judge